

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5611  
OFFERED BY MR. SCOTT OF GEORGIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Association  
3 of Registered Agents and Brokers Reform Act of 2008”.

**4 SEC. 2. REESTABLISHMENT OF THE NATIONAL ASSOCIA-  
5 TION OF REGISTERED AGENTS AND BRO-  
6 KERS.**

7 (a) IN GENERAL.—Subtitle C of title III of the  
8 Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is  
9 amended to read as follows:

**10 “Subtitle C—National Association  
11 of Registered Agents and Brokers**

**12 “SEC. 321. NATIONAL ASSOCIATION OF REGISTERED  
13 AGENTS AND BROKERS.**

14 “(a) ESTABLISHMENT.—There is established the Na-  
15 tional Association of Registered Agents and Brokers  
16 (hereafter in this subtitle referred to as the ‘Association’).

17 “(b) STATUS.—The Association shall—

18 “(1) be a nonprofit corporation;

1           “(2) have succession until dissolved by an Act  
2 of Congress;

3           “(3) not be an agent or instrumentality of the  
4 United States Government; and

5           “(4) except as otherwise provided in this sub-  
6 title, be subject to, and have all the powers conferred  
7 upon a nonprofit corporation by the District of Co-  
8 lumbia Nonprofit Corporation Act (D.C. Code, sec.  
9 29–301.01 et seq.).

10 **“SEC. 322. PURPOSE.**

11           “The purpose of the Association shall be to provide  
12 a mechanism through which licensing, continuing edu-  
13 cation, and other nonresident insurance producer quali-  
14 fication requirements and conditions can be adopted and  
15 applied on a multi-state basis (without affecting the laws,  
16 rules, and regulations pertaining to resident insurance  
17 producers or appointments or producing a net loss of pro-  
18 ducer licensing revenues to States), while preserving the  
19 right of States to license, supervise, discipline, and estab-  
20 lish licensing fees for insurance producers, and to pre-  
21 scribe and enforce laws and regulations with regard to in-  
22 surance-related consumer protection and unfair trade  
23 practices.

24 **“SEC. 323. MEMBERSHIP.**

25           “(a) ELIGIBILITY.—

1           “(1) IN GENERAL.—Any insurance producer li-  
2           censed in its home State shall be eligible to become  
3           a member in the Association.

4           “(2) INELIGIBILITY FOR SUSPENSION OR REV-  
5           OCATION OF LICENSE.—Notwithstanding paragraph  
6           (1), a State-licensed insurance producer shall not be  
7           eligible to become a member if a State insurance  
8           regulator has suspended or revoked such producer’s  
9           license in that State during the 3-year period pre-  
10          ceding the date on which such producer applies for  
11          membership.

12          “(3) RESUMPTION OF ELIGIBILITY.—Paragraph  
13          (2) shall cease to apply to any insurance producer  
14          if—

15                 “(A) the State insurance regulator renews  
16                 the license of such producer in the State in  
17                 which the license was suspended or revoked; or

18                 “(B) the suspension or revocation is subse-  
19                 quently overturned.

20          “(4) CRIMINAL BACKGROUND CHECK RE-  
21          QUIRED.—

22                 “(A) IN GENERAL.—A State-licensed in-  
23                 surance producer shall not be eligible to become  
24                 a member unless the producer has submitted to  
25                 a national criminal background record check.

1           “(B) CRIMINAL BACKGROUND CHECK OR-  
2           DERED BY HOME STATE.—Any insurance pro-  
3           ducer licensed in a State that, as a condition  
4           for such licensure, requires the submission of  
5           identification information to the Federal Bu-  
6           reau of Investigation for a national criminal  
7           background record check shall be deemed to  
8           have submitted to a national criminal back-  
9           ground record check for purposes of subpara-  
10          graph (A).

11          “(C) CRIMINAL HISTORY CHECK ORDERED  
12          BY ASSOCIATION.—

13                 “(i) IN GENERAL.—The Association  
14                 may submit identification information ob-  
15                 tained from any State-licensed insurance  
16                 producer licensed in a State that has not  
17                 submitted to a national criminal back-  
18                 ground record check, and a request for a  
19                 national criminal background record check  
20                 of such producer, to the Federal Bureau of  
21                 Investigation.

22                 “(ii) REGULATIONS.—The board of  
23                 directors of the Association shall prescribe  
24                 regulations for obtaining and utilizing  
25                 identification information and criminal

1 background record information, including  
2 the establishment of fees required to per-  
3 form a criminal background record check.

4 “(D) ATTORNEY GENERAL AUTHORIZA-  
5 TION.—Upon receiving a request from the Asso-  
6 ciation, the Attorney General shall—

7 “(i) search the records of the Criminal  
8 Justice Information Services Division of  
9 the Federal Bureau of Investigation, and  
10 any other similar database over which the  
11 Attorney General has authority and deems  
12 appropriate, for any criminal background  
13 records (including wanted persons informa-  
14 tion) corresponding to the identification in-  
15 formation provided under subparagraph  
16 (F); and

17 “(ii) provide any relevant information  
18 contained in such records that pertain to  
19 the request directly to the Association.

20 “(E) RELEVANT INFORMATION DE-  
21 FINED.—For purposes of subparagraph (D)(ii),  
22 the term ‘relevant information’ means any of  
23 the following records:

24 “(i) All felony convictions.

1                   “(ii) All misdemeanor convictions in-  
2                   volving—

3                   “(I) violation of a law involving  
4                   financial activities;

5                   “(II) dishonesty or breach of  
6                   trust, within the meaning of section  
7                   1033 of title 18, United States Code,  
8                   including taking, withholding, mis-  
9                   appropriating, or converting money or  
10                  property;

11                  “(III) failure to comply with  
12                  child support obligations;

13                  “(IV) failure to pay taxes; and

14                  “(V) domestic violence, child  
15                  abuse, burglary of a dwelling, or a  
16                  criminal offense that has as an ele-  
17                  ment the use or attempted use of  
18                  physical force, or threat of great bod-  
19                  ily harm, or the use, attempted use,  
20                  or threatened use of a deadly weapon,  
21                  against an individual, including com-  
22                  mitting or attempting to commit mur-  
23                  der, manslaughter, kidnapping, aggra-  
24                  vated assault, forcible sex offenses,

1 robbery, arson, extortion, and extor-  
2 tionate extension of credit.

3 “(F) FORM OF REQUEST.—A request  
4 under subparagraph (C) shall include a copy of  
5 any necessary identification information re-  
6 quired by the Attorney General concerning the  
7 person about whom the record is requested and  
8 a statement signed by the person acknowledging  
9 that the Association may request the search.

10 “(G) LIMITATION ON PERMISSIBLE USES  
11 OF INFORMATION.—Information obtained under  
12 this section may—

13 “(i) be used only for regulatory or law  
14 enforcement purposes or for purposes of  
15 determining compliance with membership  
16 criteria established by the Association;

17 “(ii) be disclosed only to the Associa-  
18 tion, State insurance regulators, or Federal  
19 or State law enforcement agencies; and

20 “(iii) be disclosed only if the recipient  
21 agrees to—

22 “(I) maintain the confidentiality  
23 of such information; and

1                   “(II) limit the use of such infor-  
2                   mation to the purposes described in  
3                   clause (i).

4                   “(H) PENALTY FOR IMPROPER USE.—  
5                   Whoever uses any information obtained under  
6                   this section knowingly and willfully for an un-  
7                   authorized purpose shall be fined under title 18,  
8                   United States Code, imprisoned for not more  
9                   than 2 years, or both.

10                  “(I) RELIANCE ON INFORMATION.—Nei-  
11                  ther the Association nor any of its directors, of-  
12                  ficers, or employees who reasonably rely on in-  
13                  formation provided under this section shall be  
14                  liable in any action for using information as  
15                  permitted under this section in good faith.

16                  “(J) CLARIFICATION OF SECTION 1033.—

17                  “(i) IN GENERAL.—With respect to  
18                  any action brought under section  
19                  1033(e)(1)(B) of title 18, United States  
20                  Code, no person engaged in the business of  
21                  conducting financial activities shall be sub-  
22                  ject to any penalty resulting from such sec-  
23                  tion if the individual whom the person per-  
24                  mitted to engage in the business of insur-  
25                  ance is a member of the Association or is

1 licensed, or approved (as part of an appli-  
2 cation or otherwise), by a State insurance  
3 regulator that performs criminal back-  
4 ground checks under this section, unless  
5 such person knows that the individual is in  
6 violation of section 1033(e)(1)(A) of such  
7 title.

8 “(ii) FINANCIAL ACTIVITIES DE-  
9 FINED.—For purposes of this subpara-  
10 graph, the term ‘financial activities’—

11 “(I) means banking activities (in-  
12 cluding the ownership of a bank), se-  
13 curities activities, insurance activities,  
14 or commodities activities; and

15 “(II) includes all activities that  
16 are financial in nature or are inci-  
17 dental to a financial activity (as de-  
18 fined under section 4(k) of the Bank  
19 Holding Company Act of 1956).

20 “(K) FEES.—The Attorney General may  
21 charge a reasonable fee for the provision of in-  
22 formation under this paragraph.

23 “(L) RULE OF CONSTRUCTION.—No provi-  
24 sion of this paragraph shall be construed as—

1                   “(i) requiring a State insurance regu-  
2                   lator to perform criminal background  
3                   checks under this section; or

4                   “(ii) superseding or otherwise limiting  
5                   any other authority that allows access to  
6                   criminal background records.

7                   “(M) REGULATIONS.—The Attorney Gen-  
8                   eral may prescribe regulations to carry out this  
9                   paragraph.

10                  “(N) INELIGIBILITY FOR MEMBERSHIP.—  
11                  The Association may deny membership to any  
12                  State-licensed insurance producer on the basis  
13                  of criminal history information obtained pursu-  
14                  ant to subparagraph (D).

15                  “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
16                  TERIA.—The Association may establish membership cri-  
17                  teria that—

18                         “(1) bear a reasonable relationship to the pur-  
19                         poses for which the Association was established; and

20                         “(2) do not unfairly limit the access of smaller  
21                         agencies to the Association membership, including  
22                         imposing discriminatory membership fees on smaller  
23                         insurance producers.

24                  “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES  
25                  OF MEMBERSHIP.—

1           “(1) CLASSES OF MEMBERSHIP.—The Associa-  
2           tion may establish separate classes of membership,  
3           with separate criteria, if the Association reasonably  
4           determines that performance of different duties re-  
5           quires different levels of education, training, experi-  
6           ence, or other qualifications.

7           “(2) CATEGORIES.—

8                   “(A) SEPARATE CATEGORIES FOR PRO-  
9                   DUCERS PERMITTED.—The Association may es-  
10                  tablish separate categories of membership for  
11                  producers and for other persons within each  
12                  class, based on the types of licensing categories  
13                  that exist under State laws.

14                   “(B) SEPARATE TREATMENT FOR DEPOSI-  
15                   TORY INSTITUTIONS PROHIBITED.—No special  
16                  categories of membership, and no distinct mem-  
17                  bership criteria, shall be established for mem-  
18                  bers which are depository institutions or for  
19                  employees, agents, or affiliates of depository in-  
20                  stitutions.

21           “(d) MEMBERSHIP CRITERIA.—

22                   “(1) IN GENERAL.—The Association may estab-  
23                  lish criteria for membership which shall include  
24                  standards for personal qualifications, education,  
25                  training, and experience.

1           “(2) QUALIFICATIONS.—In establishing criteria  
2           under paragraph (1), the Association shall consider  
3           the NAIC Producer Licensing Model Act and the  
4           highest levels of insurance producer qualifications  
5           established under the licensing laws of the States.

6           “(3) ASSISTANCE FROM STATES.—

7                   “(A) IN GENERAL.—The Association may  
8                   request a State to provide assistance in inves-  
9                   tigating and evaluating a prospective member’s  
10                  eligibility for membership in the Association.

11                  “(B) RULE OF CONSTRUCTION.—Subpara-  
12                  graph (A) shall not be construed as requiring or  
13                  authorizing any State to adopt new or addi-  
14                  tional requirements concerning the licensing or  
15                  evaluation of insurance producers.

16           “(4) DENIAL OF MEMBERSHIP.—The Associa-  
17           tion may deny membership to any State-licensed in-  
18           surance producer for failure to meet the membership  
19           criteria established by the Association.

20           “(e) EFFECT OF MEMBERSHIP.—

21                   “(1) AUTHORITY OF ASSOCIATION MEMBERS.—  
22           Membership in the Association shall—

23                   “(A) authorize an insurance producer to  
24                   sell, solicit, negotiate, effect, procure, deliver,  
25                   renew, continue, or bind insurance in any State

1 for which the member pays the licensing fee set  
2 by such State for any line or lines of insurance  
3 specified in such producer's home State license,  
4 and exercise all such incidental powers, as shall  
5 be necessary to carry out such activities, includ-  
6 ing claims adjustments and settlement, risk  
7 management, employee benefits advice, retire-  
8 ment planning, and any other insurance-related  
9 consulting activities;

10 “(B) be the equivalent of a nonresident in-  
11 surance producer license issued in any state  
12 where the member pays the licensing fee; and

13 “(C) subject an insurance producer to all  
14 laws, regulations, provisions or other action of  
15 any State concerning revocation or suspension  
16 of a member's ability to engage in any activity  
17 within the scope of authority granted under this  
18 subsection and to all state laws, regulations,  
19 provisions and actions preserved under para-  
20 graph (4).

21 “(2) **DUPLICATIVE LICENSES.**—No State, other  
22 than the member's home State, may require an indi-  
23 vidual member to obtain a business entity license or  
24 membership in order to engage in any activity within  
25 the scope of authority granted in paragraph (1) or

1 in order for the member or any employer, employee,  
2 or affiliate of the member to receive compensation  
3 for the member's performance of any such activity.

4 “(3) AGENT FOR REMITTING FEES.—The Asso-  
5 ciation shall act as any member's agent for purposes  
6 of remitting licensing fees to any State pursuant to  
7 paragraph (1).

8 “(4) PRESERVATION OF STATE CONSUMER PRO-  
9 TECTION AND MARKET CONDUCT REGULATION.—No  
10 provision of this section shall be construed as alter-  
11 ing or affecting the continuing effectiveness of any  
12 law, regulation, provision, or other action of any  
13 State which purports to regulate market conduct or  
14 unfair trade practices or establish consumer protec-  
15 tions to the extent that such law, regulation, provi-  
16 sion, or other action is not inconsistent with the pro-  
17 visions of this subtitle, and then only to the extent  
18 of such inconsistency.

19 “(f) BIENNIAL RENEWAL.—Membership in the Asso-  
20 ciation shall be renewed on a biennial basis.

21 “(g) CONTINUING EDUCATION.—

22 “(1) IN GENERAL.—The Association shall es-  
23 tablish, as a condition of membership, continuing  
24 education requirements which shall be comparable to

1 the continuing education requirements under the li-  
2 censing laws of a majority of the States.

3 “(2) STATE CONTINUING EDUCATION REQUIRE-  
4 MENTS.—A member may not be required to satisfy  
5 continuing education requirements imposed under  
6 the laws, regulations, provisions, or actions of any  
7 State other than such member’s home State.

8 “(3) RECIPROCITY.—The Association shall not  
9 require a member to satisfy continuing education re-  
10 quirements that are equivalent to any continuing  
11 education requirements of the member’s home State  
12 that have been satisfied by the member during the  
13 applicable licensing period.

14 “(4) LIMITATION ON ASSOCIATION.—The Asso-  
15 ciation shall not directly or indirectly offer any con-  
16 tinuing education courses for insurance producers.

17 “(h) PROBATION, SUSPENSION AND REVOCATION.—  
18 The Association may place an insurance producer that is  
19 a member of the Association on probation or suspend or  
20 revoke such producer’s membership in the Association, as  
21 the Association determines to be appropriate, if—

22 “(1) the producer fails to meet the applicable  
23 membership criteria of the Association; or

24 “(2) the producer has been subject to discipli-  
25 nary action pursuant to a final adjudicatory pro-

1 ceeding under the jurisdiction of a State insurance  
2 regulator.

3 “(i) OFFICE OF CONSUMER COMPLAINTS.—

4 “(1) IN GENERAL.—The Association shall es-  
5 tablish an office of consumer complaints that shall—

6 “(A) receive and, when appropriate, inves-  
7 tigate complaints from both consumers and  
8 State insurance regulators related to members  
9 of the Association;

10 “(B) maintain records of all complaints re-  
11 ceived in accordance with subparagraph (A) and  
12 make such records available to the National As-  
13 sociation of Insurance Commissioners (herein-  
14 after in this subtitle referred to as the ‘NAIC’)  
15 and to each State insurance regulator for the  
16 State of residence of the consumer who filed the  
17 complaint; and

18 “(C) refer, when appropriate, any such  
19 complaint to any appropriate State insurance  
20 regulator.

21 “(2) TELEPHONE AND OTHER ACCESS.—The  
22 office of consumer complaints shall maintain a toll-  
23 free telephone number for the purpose of this sub-  
24 section and, as practicable, other alternative means

1 of communication with consumers, such as an Inter-  
2 net web page.

3 **“SEC. 324. BOARD OF DIRECTORS.**

4 “(a) ESTABLISHMENT.—There is established the  
5 board of directors of the Association (hereafter in this sub-  
6 title referred to as the ‘Board’) for the purpose of gov-  
7 erning and supervising the activities of the Association  
8 and the members of the Association.

9 “(b) POWERS.—

10 “(1) IN GENERAL.—The Board shall have such  
11 powers and authority as may be specified in the by-  
12 laws of the Association.

13 “(2) QUORUM REQUIRED.—All decisions of the  
14 Board shall require an affirmative vote of a simple  
15 majority of Board members.

16 “(c) COMPOSITION.—

17 “(1) IN GENERAL.—The Board shall be com-  
18 posed of 11 members, of whom—

19 “(A) 6 shall be State insurance commis-  
20 sioners appointed in the manner provided in  
21 paragraph (2), and

22 “(B) 5 shall be insurance industry rep-  
23 resentatives appointed in the manner provided  
24 in paragraph (3).

25 “(2) MEMBERS APPOINTED BY THE NAIC.—

1           “(A) IN GENERAL.—The NAIC shall ap-  
2           point 1 member of the Board from among State  
3           insurance commissioners in each of the fol-  
4           lowing 3 categories of States:

5                   “(i) The 18 States with the smallest  
6                   total direct written premiums from all in-  
7                   surance policies written in such States.

8                   “(ii) The 18 States with the largest  
9                   total direct written premiums from all in-  
10                  surance policies written in such States.

11                  “(iii) The States that are not among  
12                  the States described in clauses (i) and (ii).

13           “(B) AT-LARGE MEMBERS.—The NAIC  
14           shall appoint 3 Board members pursuant to cri-  
15           teria established by the NAIC’s membership.

16           “(3) MEMBERS APPOINTED BY INSURANCE  
17           TRADE ASSOCIATIONS.—

18                   “(A) INSURANCE PRODUCER REPRESENTA-  
19                   TIVES.—3 of the 5 members who are insurance  
20                   industry representatives shall be appointed as  
21                   follows by the following trade associations or  
22                   their successor organizations:

23                           “(i) 1 member appointed by the Coun-  
24                           cil of Insurance Agents and Brokers from  
25                           among representatives of such association.

1                   “(ii) 1 member appointed by the Inde-  
2                   pendent Insurance Agents and Brokers of  
3                   America from among representatives of  
4                   such association.

5                   “(iii) 1 member appointed by the Na-  
6                   tional Association of Insurance and Finan-  
7                   cial Advisors from among representatives  
8                   of such association.

9                   “(B) PROPERTY AND CASUALTY INSURER  
10                  REPRESENTATIVE.—1 of the 5 members who  
11                  are insurance industry representatives shall be  
12                  appointed by the American Insurance Associa-  
13                  tion, the National Association of Mutual Insur-  
14                  ance Companies, and the Property and Cas-  
15                  ualty Insurers Association of America from  
16                  among representatives of each such association,  
17                  on a rotating basis.

18                  “(C) LIFE AND HEALTH INSURER REP-  
19                  RESENTATIVE.—1 of the 5 members who are  
20                  insurance industry representatives shall be ap-  
21                  pointed by the American Council of Life Insur-  
22                  ers and the Association of Health Insurance  
23                  Plans from among representatives of each such  
24                  association, on a rotating basis.

25                  “(4) ALTERNATE APPOINTMENT.—

1           “(A) IN GENERAL.—If the NAIC or a  
2           nominating group of insurance trade associa-  
3           tions fails to make appointments to the Board  
4           as required under paragraph (2) or (3), the  
5           President shall appoint such members of the  
6           Association’s Board from lists of candidates  
7           provided by the NAIC, in the case of a member  
8           described in paragraph (2) or the nominating  
9           group of insurance trade associations pursuant  
10          to the relevant subparagraph of paragraph (3),  
11          in the case of a member described in any such  
12          subparagraph.

13           “(B) PROCEDURES FOR OBTAINING NAIC  
14          APPOINTMENT RECOMMENDATIONS.—

15           “(i) PRESIDENTIAL APPOINTMENT  
16          FROM LIST.—If the NAIC fails to appoint  
17          members of the Board as provided under  
18          subparagraph (A) or (B) of paragraph (2)  
19          within 60 days after the date of the enact-  
20          ment of the National Association of Reg-  
21          istered Agents and Brokers Reform Act of  
22          2008, the President shall, with the advice  
23          and consent of the Senate, appoint 6 mem-  
24          bers to the Board who are current State  
25          insurance commissioners in accordance

1 with the requirements of subparagraphs  
2 (A) and (B) of paragraph (2) from a list  
3 of candidates recommended to the Presi-  
4 dent by the NAIC.

5 “(ii) PRESIDENTIAL APPOINTMENT  
6 WITHOUT A LIST.—If the NAIC fails to  
7 provide a list within 90 days after the date  
8 of the enactment of the National Associa-  
9 tion of Registered Agents and Brokers Re-  
10 form Act of 2008, or if any list that is pro-  
11 vided does not include at least 10 rec-  
12 ommended candidates or comply with the  
13 requirements of paragraph (2), the Presi-  
14 dent shall, with the advice and consent of  
15 the Senate, appoint 6 members to the  
16 Board without considering the views of the  
17 NAIC, in accordance with requirements of  
18 paragraph (2).

19 “(C) PROCEDURES FOR OBTAINING INSUR-  
20 ANCE TRADE ASSOCIATION GROUP APPOINT-  
21 MENT RECOMMENDATIONS.—

22 “(i) PRESIDENTIAL APPOINTMENT  
23 FROM LIST.—If any group of nominating  
24 insurance trade associations identified  
25 under subparagraph (A), (B), or (C) of

1 paragraph (3) fails to appoint members of  
2 the Board as provided under such subpara-  
3 graph within 60 days after the date of the  
4 enactment of the National Association of  
5 Registered Agents and Brokers Reform  
6 Act of 2008, the President shall, with the  
7 advice and consent of the Senate, make the  
8 requisite appointments pursuant to each  
9 such subparagraph from a list of can-  
10 didates recommended to the President by  
11 such group.

12 “(ii) PRESIDENTIAL APPOINTMENT  
13 WITHOUT A LIST.—If the nominating  
14 group of insurance trade associations iden-  
15 tified under subparagraph (A), (B), or (C)  
16 of paragraph (3) fails to provide a list  
17 within 90 days after date of the enactment  
18 of the National Association of Registered  
19 Agents and Brokers Reform Act of 2008,  
20 or if any list that is provided does not com-  
21 ply with the requirements of the subpara-  
22 graph, the President shall, with the advice  
23 and consent of the Senate, make the req-  
24 uisite appointments without considering  
25 the views of such group.

1                   “(iii) LIST OF RECOMMENDATIONS.—

2                   Any list of recommended candidates pro-  
3                   vided to the President by a nominating  
4                   group of insurance trade associations iden-  
5                   tified under subparagraph (A), (B), or (C)  
6                   of paragraph (3) shall include—

7                   “(I) at least 2 recommended can-  
8                   didates from each association identi-  
9                   fied under paragraph (3)(A);

10                  “(II) at least 2 recommended  
11                  candidates, in the case of associations  
12                  identified under paragraph (3)(B);  
13                  and

14                  “(III) at least 2 recommended  
15                  candidates, in the case of associations  
16                  identified under paragraph (3)(C).

17                  “(D) ALTERNATE APPOINTMENT OF STATE  
18                  INSURANCE COMMISSIONERS.—If fewer than 6  
19                  State insurance commissioners accept appoint-  
20                  ment to the Board pursuant to subparagraph  
21                  (B), the President, with the advice and consent  
22                  of the Senate, may appoint the remaining State  
23                  insurance commissioner members of the Board  
24                  from among individuals who are current or

1 former State insurance commissioners, to the  
2 extent that—

3 “(i) any former insurance commis-  
4 sioner appointed by the President shall not  
5 be employed by or have a present direct or  
6 indirect financial interest in any insurer or  
7 other entity in the insurance industry  
8 other than direct or indirect ownership of,  
9 or beneficial interest in, any insurance pol-  
10 icy or annuity contract written or sold by  
11 an insurer; and

12 “(ii) not more than 3 members ap-  
13 pointed to membership on the Board under  
14 this subparagraph belong to the same po-  
15 litical party as the President.

16 “(5) STATE INSURANCE COMMISSIONER DE-  
17 FINED.—For purposes of this subsection, the term  
18 ‘State insurance commissioner’ means a person who  
19 serves in the position in State government, or on the  
20 board, commission, or other body that is the prin-  
21 cipal insurance regulatory authority for the State.

22 “(d) TERMS.—

23 “(1) IN GENERAL.—The term of each Board  
24 member shall, after the initial appointment of the  
25 members of the Board, be for 2 years, with 1/2 of the

1 members to be appointed each year and divided as  
2 evenly as possible between members appointed under  
3 paragraphs (2) and (3) of subsection (c).

4 “(2) LIMITATION ON SUCCESSIVE TERMS.—  
5 Only Board members appointed under subsections  
6 (c)(2) and (c)(3)(A) may be re-appointed for an ad-  
7 ditional term.

8 “(e) BOARD VACANCIES.—

9 “(1) IN GENERAL.—Any vacancy on the board  
10 of directors shall be filled as provided under sub-  
11 paragraph (A) or (B) of paragraph (2), and any  
12 member appointed to fill a vacancy occurring before  
13 the expiration of the term for which the member’s  
14 predecessor was appointed shall be appointed only  
15 for the remainder of that term.

16 “(2) ALTERNATE APPOINTMENT.—If the NAIC  
17 or a nominating group of trade associations fails to  
18 appoint a member to the Board to fill a vacancy  
19 within 60 days from the date that such vacancy oc-  
20 curs, the President shall, with the advice and con-  
21 sent of the Senate, make the requisite appointment  
22 pursuant to the procedures established under the ap-  
23 plicable subparagraph of subsection (c)(4).

1           “(f) MEETINGS.—The Board shall meet at the call  
2 of the chairperson, or as otherwise provided by the bylaws  
3 of the Association.

4   **“SEC. 325. OFFICERS.**

5           “(a) POSITIONS.—The officers of the Association  
6 shall consist of a chairperson and a vice chairperson of  
7 the Board, an executive director, secretary, and treasurer  
8 of the Association, and such other officers and assistant  
9 officers as may be deemed necessary.

10          “(b) MANNER OF SELECTION.—Each officer of the  
11 Board and the Association shall be elected or appointed  
12 at such time, in such manner, and for such terms as may  
13 be prescribed in the bylaws of the Association.

14   **“SEC. 326. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

15          “(a) ADOPTION AND AMENDMENT OF BYLAWS.—

16               “(1) COPY REQUIRED TO BE FILED.—The  
17 board of directors of the Association shall submit to  
18 the President, the Congress, and the NAIC any pro-  
19 posed bylaw or rules of the Association or any pro-  
20 posed amendment to the bylaws or rules, accom-  
21 panied by a concise general statement of the basis  
22 and purpose of such proposal.

23               “(2) EFFECTIVE DATE.—Any proposed bylaw  
24 or rule or proposed amendment to the bylaws or  
25 rules shall take effect, after notice published in an

1 insurance trade journal and opportunity for com-  
2 ment, upon such date as the Association may des-  
3 ignate.

4 “(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

5 “(1) SPECIFICATION OF CHARGES.—In any pro-  
6 ceeding to determine whether membership shall be  
7 denied, suspended, revoked, or not renewed (here-  
8 after in this section referred to as a ‘disciplinary ac-  
9 tion’) or to determine whether a member of the As-  
10 sociation should be placed on probation, the Associa-  
11 tion shall bring specific charges, notify such member  
12 of such charges, give the member an opportunity to  
13 defend against the charges, and keep a record.

14 “(2) SUPPORTING STATEMENT.—A determina-  
15 tion to take disciplinary action shall be supported by  
16 a statement setting forth—

17 “(A) any act or practice in which such  
18 member has been found to have been engaged;

19 “(B) the specific provision of this subtitle,  
20 the rules or regulations under this subtitle, or  
21 the rules of the Association which any such act  
22 or practice is deemed to violate; and

23 “(C) the sanction imposed and the reason  
24 for such sanction.

1 **“SEC. 327. POWERS.**

2 “In addition to all the powers conferred upon a non-  
3 profit corporation by the District of Columbia Nonprofit  
4 Corporation Act, the Association shall have the following  
5 powers:

6 “(1) To establish and collect such membership  
7 fees as the Association finds necessary to impose to  
8 cover the costs of its operations.

9 “(2) To adopt, amend, and repeal bylaws and  
10 rules governing the conduct of Association business  
11 and performance of its duties.

12 “(3) To establish procedures for providing no-  
13 tice and opportunity for comment pursuant to sec-  
14 tion 326(a).

15 “(4) To enter into and perform such agree-  
16 ments as necessary to carry out its duties.

17 “(5) To hire employees, professionals or special-  
18 ists, and elect or appoint officers, and to fix their  
19 compensation, define their duties and give them ap-  
20 propriate authority to carry out the purposes of this  
21 subtitle, and determine their qualification; and to es-  
22 tablish the Association’s personnel policies and pro-  
23 grams relating to, among other things, conflicts of  
24 interest, rates of compensation. and qualifications of  
25 personnel.

26 “(6) To borrow money.

1           “(7) To assess board member organizations and  
2           associations fees for such amounts that the Associa-  
3           tion determines to be necessary and appropriate to  
4           organize and begin operations of the Association,  
5           which shall be treated as loans to be repaid by the  
6           Association with interest at market rate.

7   **“SEC. 328. REPORT BY ASSOCIATION.**

8           “(a) IN GENERAL.—As soon as practicable after the  
9           close of each fiscal year, the Association shall submit to  
10          the President, the Congress, and the NAIC a written re-  
11          port regarding the conduct of its business, and the exer-  
12          cise of the other rights and powers granted by this sub-  
13          title, during such fiscal year.

14          “(b) FINANCIAL STATEMENTS.—Each report sub-  
15          mitted under subsection (a) with respect to any fiscal year  
16          shall include financial statements setting forth the finan-  
17          cial position of the Association at the end of such fiscal  
18          year and the results of its operations (including the source  
19          and application of its funds) for such fiscal year.

20   **“SEC. 329. LIABILITY OF THE ASSOCIATION AND THE DI-**  
21                   **RECTORS, OFFICERS, AND EMPLOYEES OF**  
22                   **THE ASSOCIATION.**

23          “(a) IN GENERAL.—The Association shall not be  
24          deemed to be an insurer or insurance producer within the  
25          meaning of any State law, rule, regulation, or order regu-

1 lating or taxing insurers, insurance producers, or other en-  
2 tities engaged in the business of insurance, including pro-  
3 visions imposing premium taxes, regulating insurer sol-  
4 vency or financial condition, establishing guaranty funds  
5 and levying assessments, or requiring claims settlement  
6 practices.

7 “(b) LIABILITY OF THE ASSOCIATION, ITS DIREC-  
8 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-  
9 tion nor any of its directors, officers, or employees shall  
10 have any liability to any person for any action taken or  
11 omitted in good faith under or in connection with any mat-  
12 ter subject to this subtitle.

13 **“SEC. 330. PRESIDENTIAL REVIEW.**

14 “(a) REMOVAL.—If the President determines and  
15 certifies to the Speaker of the House, the House Minority  
16 Leader, the Senate Majority Leader and the Senate Mi-  
17 nority Leader that the Association is acting in a manner  
18 contrary to the purposes of this subtitle or has failed to  
19 perform its duties under this subtitle, the President may  
20 remove the entire existing Board for the remainder of the  
21 term to which the members of the Board were appointed  
22 and appoint, in accordance with section 324(c)(4) with the  
23 advice and consent of the Senate, new members to fill the  
24 vacancies on the Board for the remainder of such terms.

1       “(b) SUSPENSION OF RULES OR ACTIONS.—The  
2 President, or a person designated by the President for  
3 such purpose, may suspend the effectiveness of any rule,  
4 or prohibit any action, of the Association which the Presi-  
5 dent or the designee determines and certifies to the Speak-  
6 er of the House, the House minority leader, the Senate  
7 majority leader, and the Senate minority leader is contrary  
8 to the purposes of this subtitle.

9       **“SEC. 331. RELATIONSHIP TO STATE LAW.**

10       “(a) PREEMPTION OF STATE LAWS.—State laws,  
11 regulations, provisions, or other actions purporting to reg-  
12 ulate insurance producers shall be preempted to the extent  
13 provided in subsection (b).

14       “(b) PROHIBITED ACTIONS.—

15               “(1) IN GENERAL.—No State shall—

16                       “(A) impede the activities of, take any ac-  
17                       tion against, or apply any provision of law or  
18                       regulation to, any insurance producer because  
19                       that insurance producer or any affiliate plans to  
20                       become, has applied to become, or is a member  
21                       of the Association;

22                       “(B) impose any requirement upon a mem-  
23                       ber of the Association that it pay different fees  
24                       to be licensed or otherwise qualified to do busi-  
25                       ness in that State;

1           “(C) impose any continuing education re-  
2           quirements on nonresident insurance producers;  
3           or

4           “(D) impose any licensing, registration, or  
5           appointment requirements upon any non-  
6           resident insurance producer that sells, solicits,  
7           negotiates, effects, procures, delivers, renews,  
8           continues, or binds insurance for commercial  
9           property and casualty risks to an insured with  
10          risks located in more than 1 State, provided  
11          that such nonresident insurance producer is  
12          otherwise licensed as an insurance producer in  
13          the State where the insured maintains its prin-  
14          cipal place of business and the contract of in-  
15          surance insures risks located in that State.

16          “(2) STATES OTHER THAN A HOME STATE.—  
17          No State, other than a member’s home State,  
18          shall—

19                 “(A) impose any licensing, integrity, per-  
20                 sonal or corporate qualifications, education,  
21                 training, experience, residency, continuing edu-  
22                 cation, or bonding requirement upon a member  
23                 of the Association that is different from the cri-  
24                 teria for membership in the Association or re-  
25                 newal of such membership;

1           “(B) impose any requirement upon a mem-  
2           ber of the Association that it be licensed, reg-  
3           istered, or otherwise qualified to do business or  
4           remain in good standing in such State, includ-  
5           ing any requirement that such insurance pro-  
6           ducer register as a foreign company with the  
7           secretary of state or equivalent State official; or

8           “(C) require that a member of the Associa-  
9           tion submit to a criminal history record check  
10          as a condition of doing business in such State.

11 **“SEC. 332. COORDINATION WITH OTHER REGULATORS.**

12          “(a) COORDINATION WITH STATE INSURANCE REGU-  
13          LATORS.—The Association may—

14               “(1) establish a central clearinghouse, or utilize  
15               the NAIC or any other entity as a central clearing-  
16               house, through which members of the Association  
17               may pursuant to section 323(e) disclose their intent  
18               to operate in 1 or more States and pay the licensing  
19               fees to the appropriate States; and

20               “(2) establish a national database for the collec-  
21               tion of regulatory information concerning the activi-  
22               ties of insurance producers or contract with the  
23               NAIC or any other entity to utilize such a database.

24          “(b) COORDINATION WITH THE FINANCIAL INDUS-  
25          TRY REGULATORY AUTHORITY.—The Association shall

1 coordinate with the Financial Industry Regulatory Au-  
2 thority in order to ease any administrative burdens that  
3 fall on persons that are members of both associations, con-  
4 sistent with the purposes of this subtitle and the Federal  
5 securities laws.

6 **“SEC. 333. JUDICIAL REVIEW AND ENFORCEMENT.**

7       “(a) JURISDICTION.—The appropriate United States  
8 district court shall have exclusive jurisdiction over litiga-  
9 tion involving the Association or any matter arising under  
10 this subtitle, including disputes between the Association  
11 and its members that arise under this subtitle, subject to  
12 chapter 7 of title 5, United States Code. Suits brought  
13 in State court involving the Association shall be deemed  
14 to have arisen under Federal law and therefore be subject  
15 to jurisdiction in, and removal to, the appropriate United  
16 States district court.

17       “(b) EXHAUSTION OF REMEDIES.—An aggrieved  
18 person shall be required to exhaust all available adminis-  
19 trative remedies before the Association before it may seek  
20 judicial review of an Association decision.

21       “(c) EQUAL WEIGHT AND DEFERENCE.—In any  
22 other proceeding involving this subtitle, the court shall  
23 give at least equal weight and deference to the interpreta-  
24 tions of the Association as would be given to any State

1 or Federal agency with respect to any law, regulation, in-  
2 terpretation, or order addressing the same issues.

3 **“SEC. 334. DEFINITIONS.**

4 “For purposes of this subtitle, the following defini-  
5 tions shall apply:

6 “(1) HOME STATE.—The term ‘home State’  
7 means the State in which the insurance producer  
8 maintains its principal place of residence or business  
9 and is licensed to act as an insurance producer.

10 “(2) INSURANCE.—The term ‘insurance’ means  
11 any product, other than title insurance, defined or  
12 regulated as insurance by the appropriate State in-  
13 surance regulatory authority.

14 “(3) INSURANCE PRODUCER.—The term ‘insur-  
15 ance producer’ means any insurance agent or  
16 broker, excess or surplus lines broker or agent, in-  
17 surance consultant, limited insurance representative,  
18 and any other individual or entity that solicits, nego-  
19 tiates, effects, procures, delivers, renews, continues  
20 or binds policies of insurance or offers advice, coun-  
21 sel, opinions or services related to insurance.

22 “(4) STATE.—The term ‘State’ includes any  
23 State, the District of Columbia, any territory of the  
24 United States, and Puerto Rico, Guam, American  
25 Samoa, the Trust Territory of the Pacific Islands,

1 the Virgin Islands, and the Northern Mariana Is-  
2 lands.

3 “(5) STATE LAW.—

4 “(A) IN GENERAL.—The term ‘State law’  
5 includes all laws, decisions, rules, regulations,  
6 or other State action having the effect of law,  
7 of any State.

8 “(B) LAWS APPLICABLE IN THE DISTRICT  
9 OF COLUMBIA.—A law of the United States ap-  
10 plicable only to or within the District of Colum-  
11 bia shall be treated as a State law rather than  
12 a law of the United States.”.

13 (b) CLERICAL AMENDMENT.—The table of contents  
14 for the Gramm-Leach-Bliley Act is amended by striking  
15 the items relating to subtitle C of title III and inserting  
16 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

“Sec. 321. National association of registered agents and brokers.

“Sec. 322. Purpose.

“Sec. 323. Membership.

“Sec. 324. Board of directors.

“Sec. 325. Officers.

“Sec. 326. Bylaws, rules, and disciplinary action.

“Sec. 327. Powers.

“Sec. 328. Report by association.

“Sec. 329. Liability of the association and the directors, officers, and employees  
of the association.

“Sec. 330. Presidential review.

“Sec. 331. Relationship to state law.

“Sec. 332. Coordination with other regulators.

“Sec. 333. Judicial review and enforcement.

“Sec. 334. Definitions.”.

